tainty on the offerer as the one who took the first step, and holds that when the acceptor has done all that he ought to do, he may consider the contract complete, certainly does not apply where the acceptor has been negligent. No man by his negligence should be allowed to throw a risk upon another without his consent. The test in such cases, therefore, would seem to be that if there is any risk of delay at the time the letter is mailed, caused by the negligence of the acceptor, the acceptance should not take effect until received.[8] Very slight errors, as in penmanship or spelling, should not be fatal unless dangerous. The risk alone should be the test, and subsequent delay or prompt delivery should be important only as evidence of that. For if there is danger of delay on account of misdirection, and the acceptance will not complete the contract at the time it is mailed, it would hardly be logical to contend that a merely fortuitously prompt delivery would relate back, and change the original character of the act.[9]

There is a second way in which the acceptor might throw risk upon the offerer without authorization. Although his situation is not ordinarily changed by unusual delays in the transmission of the mails,[10] yet, if, knowing beforehand of an existing danger of such delays, he nevertheless uses the mails, he cannot claim the protection of an authorization for such action implied when the mails were regular. Unless the offerer, by himself knowingly using the mail under these extraordinary conditions, has given implied permission to the acceptor to do the same, no such implied permission exists. Here, then, is another limitation to this doctrine, since it is always based upon some sort of authorization. During the Transvaal war, the holder of an option to buy certain land mailed three letters of acceptance before the expiration of that option. As, owing to the war, there was no regular postal communication, only one letter was delivered, and that after the option had expired. It was held that the acceptance did not take effect when mailed. *Bal* v. *van Staden*, 20 So. Afric. L. J. 407. The decision is doubtless sound. The acceptor ought not to be allowed knowingly to throw any risk upon the offerer which the latter has not, at least by implication, agreed to accept. The same principle applies as in the case of his negligence. Whenever at the time the acceptor mails the letter he knows that he is incurring an unauthorized risk, or whenever at that time his negligence has occasioned such a risk, the acceptance should not take effect until received.

LIABILITY OF MUNICIPAL CORPORATIONS FOR SERVICES PERFORMED UNDER VOID CONTRACTS. — By an action in quasi-contract one who does work under a contract supposedly valid, but actually invalid, can generally recover the value of the benefits conferred by his services.[1] Where, however, services are so rendered for a municipal corporation other considerations become important. Often there are statutes expressly prohibiting recovery. Where there are no such statutes the question has frequently arisen and the cases have been divided into two classes: first, where the services

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[8] Blake *v.* Hamburg, etc., Ins. Co., 67 Tex. 160; Potts *v.* Whitehead, 20 N. J. Eq. 55. *Contra*, Schultz *v.* Phenix Ins. Co., 77 Fed. Rep. 375.

[9] But see McCulloch *v.* Eagle Ins. Co., *supra*.

[10] Dunlop *v.* Higgins, 1 H. L. Cas. 381.

[1] Van Deusen *v.* Blum, 18 Pick. (Mass.) 229.

are rendered under a contract *ultra vires* in its nature; second, where the services are rendered under a contract void because of noncompliance with some technical requirement either of the general law or the corporation's charter. A third class is suggested by a recent case in which recovery was allowed for services rendered under a contract made for the corporation by an agent who had no authority. *City of Chicago* v. *McKechney*, 68 N. E. Rep. 954 (Ill.).

In the first class of cases, services performed under an *ultra vires* contract, recovery in quasi-contract is allowed only where it will impose no burden on the taxpayers; where in effect recovery is merely to return what the corporation has received. For example, recovery was allowed of money paid to a town on a void contract for the sale of a fishery.[2] This, it is submitted, is the correct rule. If what has been received can be returned, it must be paid for when not returned. So also if it has been applied to legitimate corporate purposes, it must be paid for. In other cases, however, there should be no liability. To allow recovery would be to allow the corporate officials to indirectly impose a burden on the taxpayers which the law has directly forbidden, and would open the door to extensive frauds on the public.

Where work is done under a contract void because of some technicality and not in its substance *ultra vires*, it seems clear that there should be a remedy in quasi-contract for the reasonable value of the benefits conferred. An individual who has procured services by means of a contract of this sort, invalid, for instance, because of noncompliance with the Statute of Frauds, is liable for their value in quasi-contract.[3] A corporation in such cases should stand in the same position as an individual. The services have been requested and received. They are services for which the corporation had a right to contract, and it is held for no more than the benefit received. A more obvious case for quasi-contract can hardly be imagined. The courts, however, in such cases are not unanimous. Recovery is generally made to turn on the nature of the technical defect.[4]

The courts, in opposition to the principal case, have generally held that where services are performed under a contract made for the corporation by an officer who had no authority, there can be no recovery.[5] It is said that to allow recovery in such cases would make possible extensive frauds on the public.[6] This objection, however, seems untenable, for the proper authorities have the power to make contracts for the same purpose and recovery is limited to the benefit conferred. There seems to be no reason for treating the corporation in such cases differently from an individual. Recovery may, however, be objectionable for other reasons. The services are not at the request of the corporation. Consequently on general principles of quasi-contracts there is no liability unless the corporation voluntarily keeps the benefits conferred.[7] So, unless the corporation, having the power to return, nevertheless retains the benefit of the services, it should incur no liability in this class of cases.

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[2] Dill *v.* Inhabitants of Wareham, 7 Met. (Mass.) 438.
[3] Cadman *v.* Markle, 76 Mich. 448; Montague *v.* Garnett, 3 Bush (Ky.) 297.
[4] McDonald *v.* Mayor, etc., New York, 68 N. Y. 23.
[5] Bonesteel *v.* Mayor, etc., New York, 22 N. Y. 162.
[6] Hague *v.* City of Philadelphia, 48 Pa. St. 527.
[7] Zottman *v.* San Francisco, 20 Cal. 96.